

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Tuesday, January 23, 2018
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne
- ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:32 p.m.
- PRESENTATION: Your Health Idaho. Patrick Kelly**, Director, Your Health Idaho (YHI), presented the 2017 Annual Report: Navigating Change. A copy of the report can be found on the YHI website. **Mr. Kelly** thanked the Committee for their support. He stated that YHI has worked to fulfill its mission to maintain maximum control of Idaho's insurance marketplace at minimal cost to Idahoans. He gave an overview of 2017 accomplishments. Some of the key accomplishments were: 1) saving \$22 million for Idahoans from an assessment fee which is lower than that of the federal marketplace; 2) improved response time at call center and via emails; 3) successful implementation of technology improvements for both compliance and customer satisfaction; 4) provided more choices to Idahoans on the Exchange - with 225 plans available in 2017; and 5) training and certification of over 900 agents, brokers, and enrollment counselors to serve Idahoans at no cost to them.
- Mr. Kelly** noted that the year started with record enrollments. In 2017, 86 percent of Idahoans who enrolled via YHI received a tax credit and 71 percent selected a silver plan. Overall, the financial position of YHI remains robust. YHI invested the least amount of establishment funds of all fully functioning, state-based marketplaces. Operational expenses are the lowest in the country. YHI enrollment ranks in the top three of all states, based on per capita enrollment.
- Mr. Kelly** reported that immediately following the end of open enrollment, YHI began preparations for the next enrollment period by reviewing successes and opportunities for improvement; YHI held a summit with partners at the Departments of Insurance (DOI) and Health and Welfare (DHW), as well as carriers, and agents. He said new federal documentation requirements were implemented for "special enrollments," which were precipitated by a major life event, such as the birth of a child. Because of these controls, almost 4,000 invalid enrollments were prevented. Further, while the year was spent improving the customer experience, seasonal help was recruited earlier, skills training was enhanced, and additional hours of customer support were offered during the 2018 enrollment period.
- Mr. Kelly** indicated that YHI met with media throughout the State to discuss the shortened enrollment period and the ability to visit the website early to comparison shop. He also shared the unique possibility of no-cost premiums for some Idahoans. The \$0 premium bronze plans resulted from a lack of federal funding for Cost Sharing Reductions (CSR's); this lack of funding led to increased premiums

for silver plans and, therefore, increased tax credits. Some Idahoans experienced the most affordable premiums since the inception of YHI.

Mr. Kelly outlined the results of planning and preparation. He reported: 1) YHI had near record enrollments for 2018; 2) while the number of inquiries during open enrollment significantly increased, the time to resolve issues decreased; 3) web traffic saw dramatic improvement, indicating greater ease of use; 4) agents, customers, and partners remarked this was the best consumer experience to date.

Mr. Kelly said Idaho has maintained its stability and control of the State's health insurance marketplace. He remarked that the issue of funding Cost-Share Reductions was a significant one for Idaho. Thanks to partnerships and planning, carriers and consumers were prepared when the funding of CSR's was eliminated for 2018. YHI, the DOI, and DHW are all working together to prepare for any system or process changes that would be needed should the funding be reinstated.

Mr. Kelly stated that upcoming policy changes in 2019 include changes to the individual mandate. This change may not have a significant impact on Idaho. Research shows that most customers see value in having insurance coverage and approximately 5 to 7 percent of customers would be impacted.

DISCUSSION:

Senator Martin and **Mr. Kelly** discussed the \$22 million in savings from the assessment fee. **Vice Chairman Guthrie** remarked that he heard rates were increasing and customers were going to markets outside of the Idaho Exchange. **Mr. Kelly** said that as tax credits increase alongside rates. Consumers received a subsidy and the changes in rates have been marginal in the past.

Senator Thayn inquired as to: 1) the average tax credit; 2) the total amount granted; and 3) the size of deductibles for different plans. **Mr. Kelly** said the average tax credit was \$287 per month. For those receiving a tax credit, the amount increased to \$355 per month. The total amount of tax credit was \$304 million. **Senator Thayn** said he was concerned about access to primary care. **Mr. Kelly** said he would follow up with that information. **Senator Souza** stated that 85 percent of people on the Idaho Exchange had some sort of subsidy; she inquired as to the increase in premiums for those who do not receive the subsidy. **Mr. Kelly** said the average increase was 27 percent for 2018. **Senator Burgoyne** queried what was driving the 27 percent increase. **Mr. Kelly** said the DOI had regulatory authority over rate review and authorization. In 2018, the reduction in subsidy was 20 percent at the federal level. Due to lack of federal funding, 71 percent of YHI customers chose a silver plan.

Chairman Patrick thanked Mr. Kelly for his report.

RS 25657

Distribution of Local Tourism Grants. **Bobbi-Jo Meuleman**, Director, Department of Commerce (DOC), said the travel and tourism industry was Idaho's third-largest industry. Idaho tourism marketing and promotion activities were funded by a 2 percent travel and convention tax paid by travelers and collected by hotel, motel, private campgrounds, vacation rental, and bed and breakfast owners. Revenues deposited in the travel and convention fund are split according to Idaho Code: 45 percent for local tourism grants, 45 percent for statewide tourism efforts, and 10 percent for State administrative costs. Local tourism grants are distributed to regions based on the total dollars collected by each region through the 2 percent lodging tax. The Idaho Travel Council (ITC) is an eight-member council appointed by the Governor. The ITC is charged with overseeing the distribution of local tourism grants to the seven planning regions throughout the State. Each region uses these dollars to market its region to business and leisure travelers throughout the country and, in some cases, to a worldwide audience. Key stakeholders in Camas County, currently in Region 7 (Blaine, Camas, Lemhi, Custer, and Butte

counties), have requested to be grouped with Region 4 (Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties), as they believe this will result in better regional alignment of the county's limited tourism marketing dollars. **Ms. Meuleman** said this legislation would not impact the General Fund. If approved, this change would shift approximately \$4,000 annually from Region 7 to Region 4 as part of the ITC grant program.

DISCUSSION: **Senator Souza** asked if this change left any County in the region. **Ms. Meuleman** affirmed and said Blaine, Lemhi, Custer and Butte counties would remain.

MOTION: **Senator Martin** moved to send **RS 25657** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules review.

DOCKET NO. 15-0401-1701 **Rules of the Idaho Division of Human Resources (DHR) and Idaho Personnel Commission.** **Shelli Boggie**, Senior Human Resources Specialist, DHR, addressed the proposed changes to this rule. She said references to "provisional appointment," was deleted since the term had not been used since 2004 and was used only seven times from 1990-2004; the reference to a specific company was deleted, Hay Management Consultants; the reference to coordination of recruitment with the Director of the Idaho Department of Labor (IDOL) was deleted, as it was redundant and the applicant tracking system at the IDOL was being returned to the DHR; and approval for closure of State offices or State facilities, due to weather or other disruptions was to be amended.

Ms. Boggie said the DHR participated in negotiated rulemaking in to gather input from State agencies and interested parties to craft the proposed rule changes. Six written comments were received from State agencies. There is no fiscal impact as a result of this rulemaking.

MOTION: **Chairman Patrick** moved to approve **Docket No. 15-0401-1701**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0210-1701 **Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers.** **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), gave a brief overview of the history of this rule. She said a frequent finding of periodic audits of insurance carriers and third-party claims administrators was that a delay in adjusting decisions; these frequent delays prompted a series of discussions regarding the proper interpretations of the statutory requirements. **Ms. Vaughn** said delayed decision-making on a workers' compensation claim can lead to undue economic hardship on a worker injured on the job. Oftentimes, the only remedy available to an injured worker is to initiate litigation on the claim.

Ms. Vaughn indicated that Idaho Code § 72-304 authorized the IIC to make rules, as necessary, to ensure the prompt payment of claims. After many meetings involving all stakeholders to discuss how regulations governing sureties might be amended to clarify the IIC's audit procedures, the IIC's Advisory Committee unanimously supported the rule changes.

Ms. Vaughn stated for purposes of compliance audits, the claims administrators would be allowed 30 days from the date they received knowledge of the injury to determine compensability of the claim. If, however, the employer failed to give timely notice of the injury to the claims administrator, income benefits must be issued within 28 days of the date of disability, as required by Idaho Code § 72-402. Further, this change accommodates the concerns of claims administrators who felt they were penalized during audits for the actions of employers who failed to

timely report injuries within ten days, per Idaho Code § 72-602. This represents a compromise by offering the claims administrator adequate time to determine compensability of the claim while also allowing the IIC to fulfill its duty to enforce the requirement of Idaho Code § 72-402.

Ms. Vaughn said that when an employer fails to give timely notice of the injury, payment may be due to the injured worker before a full investigation can be completed. An injured worker need not suffer the consequences of the delayed action by the employer. If the claim is ultimately denied, income benefits may be stopped immediately.

DISCUSSION: **Senator Burgoyne** asked for clarification of new language in Paragraph 051.09.a regarding claim servicing. **Ms. Vaughn** explained this came out of the audit process. It was found that benefits were not paid within 28 days of the date of disability and claims administrators felt unfairly penalized because an employer may have informed them of the claim well after the incident. The audit would evaluate the insurance company for purposes of adjusting the claim. The insurance company has 30 days from when they received knowledge of the incident to determine compensability. It is possible that 20 or 30 days may have already passed. The injured worker, per statute, is still entitled to payment within 28 days.

Senator Lakey stated he is used to using more objective terminology such as "30 days from submission of claim" rather than what is mentioned in Subsection .09, Paragraph a. He stated that the proposed method of determinations is a harder date to define and asked for some background. **Ms. Vaughn** said an injured worker may have given notice to the employer and the employer has the duty to relay the information to the claims administrator in order to determine compensability. During audits, the IIC evaluated when payments were started back to the date of injury. If the employer did not inform the claims administrator, the employer felt they were being unfairly penalized.

Vice Chairman Guthrie questioned Subsection 9d, regarding payment of the first Permanent Partial Disability (PPD). He asked whether the relevant factor was when the check was issued or when the check was received. **Ms. Vaughn** said the date was 14 days after receipt of the medical report. The 14-day period began when the check was issued.

Senator Burgoyne remarked that part of the problem was the employer received the notice, the surety company did not learn of it within a reasonable period of time. He asked why the surety company would not be bound by notice to the employer. **Ms. Vaughn** stated the statute addresses the surety company. The employer may hesitate to file a claim, as it may not be a workers' compensation claim. **Senator Burgoyne** said he could support the rule, but he asked whether the rule went beyond the statute. **Ms. Vaughn** said the IIC has authority over employers, but must prove the employer willfully neglected to file a report.

Tom Limbaugh, IIC Chairman, clarified that the employer and surety company were one in the same. The surety company was bound by Idaho Code § 72-402 to pay loss of wages or income benefits within 28 days of the date of disability. If an employer did not submit a claim in a timely way, it would constitute a violation of statute. The surety company was bound to make the first payment of loss of income, if the claim had not been denied, within the 28-day period. He emphasized the rule changes were for auditing purposes only.

MOTION: **Chairman Patrick** moved to approve **Docket No. 17-0210-1701**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0211-1701**

Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Self-Insured Employers. **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), stated this rule mirrors the rules set forth in **Docket No. 17-0210-1701**, but substitutes self-insured employers for insurance carriers. These rules are intended to be approved or denied in tandem with **Docket No. 17-0210-1701**, so self-insured employers are not held to a different standard than insurance carriers.

MOTION:

Senator Martin moved to approve **Docket No. 17-0211-1701**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0401-1701**

Rules Governing Safety Inspections - General. **Gary Barnes**, Industrial Safety Program Manager, Division of Building Safety (DBS), explained that many of the statutory references, as well as certain provisions related to other programs and authorities in the current rules were outdated, and inapplicable. Additionally, statutory authority to administer the safety program for State facilities was transferred solely to the DBS in 2015. Accordingly, other applicable rules related to the inspections, which were previously administered by the Idaho Industrial Commission (IIC), have been updated. **Mr. Barnes** commented this rule amended outdated statutory provisions, and updated the adopted safety standards applicable to the safety inspections conducted by DBS on state-owned buildings and those owned by local governments. Unnecessary references to programs that are no longer administered through the DBS safety program, such as elevators and boilers were eliminated. Certain requirements for public employers were updated to ensure a safe workplace, as well as the annual inspection process the DBS currently engages in when inspecting State facilities. Negotiated rulemaking was conducted.

DISCUSSION:

Senator Martin remarked that every public employer must be free from hazards and this type of standard is not attainable. **Vice Chairman Guthrie** asked for a definition of "recognized hazards." **Mr. Barnes** stated the hazards were within another docket, but there was no definition. **Senator Martin** asked if there were "recognized standards." **Mr. Barnes** said there are situations that are known to be hazardous and some have a certain degree of hazard.

Senator Lakey referred to Subsection 012.01 and said the standard broadly required that the workplace be free from recognized hazards and that seemed inconsistent with the Subsection .012.03 which required every public employer to post signs for existing hazards. **Mr. Barnes** explained that some public employers have known hazards and signs should be posted; not all hazards can be mitigated. **Senator Lakey** noted there were hazards that public employers dealt with and signs should be properly posted. He questioned Subsection .01 of the rule which says the public employer shall furnish a place of employment free from "recognized hazards." He said that Section 12.03 that states hazards require signage conflicts with the section that says the place of employment must be "free from hazards." **Mr. Barnes** explained the DBS wanted the public employer to pursue a hazard-free workplace and hoped the area would be "free from hazards." **Senator Lakey** commented the language did not provide flexibility. He suggested the language could be broader when the Occupational Safety and Health Administration (OSHA) is mentioned in Subsection .011.02. He remarked the most current editions of the Life Safety Code did not have a date. **Mr. Barnes** commented the DBS was not attempting to adopt these codes, but was only using the OSHA codes as a reference standard. The DBS program was voluntary, an employer could choose to disregard the DBS documents and continue their present practice. The DBS was attempting to provide the most current documents to inspectors so if there was confusion only addressed in the National Fire Protection Agency (NFPA) or the American National Standards Institute (ANSI), they could look to new processes and procedures. **Senator Lakey** stated he was concerned and would prefer a specific date for those additions.

Senator Burgoyne referred to the fact that Section .006 is entitled Incorporation by Reference, and wondered why the codes cited in Subsection 11.02 were reference standards and why were they relevant. **Mr. Barnes** replied that the standards were only being used where OSHA standards were silent on a particular situation. **Mr. Barnes** said it was not the intent of the DBS to make these primary codes. OSHA standards were addressing workplace situations and were not necessary for place of public employment. **Senator Burgoyne** stated it appeared the codes were being adopted by reference in instances where it was necessary to find a standard and OSHA did not provide it. He queried if the codes would be applicable if OSHA did not provide the standard. **Mr. Barnes** stated the basic requirements in Section 012 were those used by the DBS. **Vice Chairman Guthrie** pointed out that the word "shall" was causing an issue.

Senator Souza asked if the Committee rejected Subsection .012.02, if that would be problematic. **Mr. Barnes** stated the rejection would certainly create problems for the DBS as they would still have to refer to the basic requirements.

Senator Lakey noted that if the guidelines were not mandatory, words like "shall" would be incongruent. He asked why the standards were stated as mandatory and not as guidelines. **Mr. Barnes** replied the employer should provide a safe workplace. He said that if there were no standards at all, the DBS might provide inaccurate assurances of safety change during inspection.

Senator Burgoyne referred to Subsection 012.01. and noted that "recognized standards" as a definition and "recognized hazards" are those addressed by codes adopted by the State. Not all of the codes may have been adopted at this point. He referred to Subsection 012.03 and asked if "injury hazard" intended to be a "recognized hazard" or were "injury hazards" something different. **Mr. Barnes** explained that "injury hazards" were meant to be in the rule and gave the example of a table saw as an injury hazard. **Senator Burgoyne** remarked that employers could be sued and encouraged the DBS to look at OSHA standards that outline what is required of an employer.

TESTIMONY: **Patrick Grace**, Regional Manager, DBS, remarked that guidelines had to be adopted by reference, as the rules were outdated and based on 1997 codes and standards. The DBS wanted to inform State agencies as to what codes and standards were being used every year when there was an inspection. The DBS wanted to be up-to-date on the standards. **Senator Burgoyne** said the implications were more serious than what was suggested. **Mr. Grace** said these rules apply to State facilities and did not apply to private property. OSHA standards were the recognized workplace standards and those standards used during inspections.

MOTION: **Senator Martin** moved to reject **Docket No. 07-0401-1701**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0901-1701 **Safety and Health Rules for Places of Public Employment.** **Gary Barnes**, Industrial Safety Program Manager, Division of Building Safety, asked for rejection of this docket.

MOTION: **Senator Lakey** moved to reject **Docket No. 07-0901-1701**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Patrick.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:58 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary